

**SCHONBRUN DESIMONE SEPLow**  
**HARRIS & HOFFMAN LLP**

723 Ocean Front Walk  
Venice, CA 90291

(310) 396-0731 (310) 399-7040 (fax)  
www.sdshh.com

Benjamin Schonbrun  
V. James DeSimone  
Michael D. Seplow  
Wilmer J. Harris  
Paul L. Hoffman  
Erin M. Pulaski  
Catherine E. Sweetser  
Aidan C. McGlaze  
Shayla R. Myers  
Kunti Dudakia

Of Counsel  
Erwin Chemerinsky  
\*Illinois and Dist. Columbia  
John Raphling

Pasadena Office  
715 Fremont Avenue  
Suite A  
South Pasadena, CA 91030  
(626) 441-4129  
(626) 283-5770 (fax)

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**FOR IMMEDIATE RELEASE**

In a challenge to the way the Department of Motor Vehicles handles some 150,000 administrative license suspension hearings each year, a lawsuit has been filed alleging that the Department's "*Administrative Per Se*" ("APS") hearings are unconstitutional.

The crux of the suit is that *by design* the DMV "Hearing Officers" who decide whether or not a person's driver's license is "administratively" suspended have a conflict of interest because they are also prosecuting the case on behalf of their employer, the DMV.

The Due Process clauses of both the United States and California constitutions require that in "adjudicative administrative proceedings" a decision-maker such as these Hearing Officers must be a "fair and neutral arbiter". As the California Supreme Court has said, "When due process requires a hearing, the adjudicator must be impartial." (*Haas v. County of San Bernardino* (2001) 27 Cal.4<sup>th</sup> 1017 at 1025.)

As an advocate for one party against the other appearing before him or her, the DMV's combined Advocate/Arbiter is by definition not "impartial."

The lawsuit challenges both the design and implementation of this biased administrative system. Given the consequential nature of the suspension of driving privileges in our contemporary society, whether one lives in a crowded metropolitan area or on an isolated farm outside of a small town, it is surprising that there have been no prior direct challenges to these flawed procedures.

Lead plaintiffs are the *California DUI Lawyers Association*, an association of lawyers who defend individuals accused of driving under the influence in court and in DMV hearings. Among its purposes "...the [Association] shall...seek the improvement of laws and procedures governing the prosecution of impaired drivers."

Plaintiff Steven R. Mandell is a licensed attorney in Santa Monica. His practice since 1972 has included representing persons accused of DUI before the DMV in APS proceedings as well in courts of law but is not a member of CDLA.

Lead counsel is Paul L. Hoffman, a name partner at the Venice based civil rights firm of SCHONBRUN DESIMONE SEPLow HARRIS & HOFFMAN LLP, joined by his partner Benjamin Schonbrun, and Joshua C. Needle, a sole practitioner in Santa Monica. Together these firms previously prevailed against the Department in *Cinquegrani v. DMV* (2008), 163 Cal.App.4<sup>th</sup> 741, a landmark ruling that compelled the DMV to stop unconstitutionally suspending the drivers licenses of individuals convicted of “Boating Under the Influence” in violation of the Harbors and Navigation Code. The Court of Appeal agreed with their contention that the DMV had no legal authority for taking such actions and sustained the injunctions against the practice that had been entered by a Superior Court judge in Los Angeles. (The California Supreme Court refused the DMV’s request to review the decision and a legislative “fix” sought by the Department never made it out of Committee.)

The Department later settled the damages portion of that class action suit by paying an award of \$5,600,000 to class members.

The current “taxpayer” suit is for declaratory and injunctive relief only; no monetary damages are being sought. Rather, the suit requests that the DMV be compelled, under court supervision, to reform the APS system by eliminating the advocacy role of the Hearing Officers, coupled with a retraining program to assist with implementing a fair and neutral decision-making procedure.

Plaintiff’s position is simply stated: The decision-maker in DMV license suspension hearings cannot be the advocate for the DMV against the licensee, and asking the Courts to correct this imbalance doesn’t seem like asking for too much.

The case is *California DUI Lawyers Association (CDLA), et al. v. Department of Motor Vehicles, et al.*, Los Angeles Superior Court case number **BC553552**. The case has not yet been assigned.

For further information please contact:

Paul L. Hoffman ([hoffpaul@aol.com](mailto:hoffpaul@aol.com)) or Benjamin Schonbrun ([schonbrun.ben@gmail.com](mailto:schonbrun.ben@gmail.com)) at (310) 396-0731.

or

Joshua C. Needle ([jcneedle@verizon.net](mailto:jcneedle@verizon.net)) at (310) 428-1092.

**COPY**

1 Paul L. Hoffman, SBN 071244  
Benjamin Schonbrun SBN 118323  
2 Catherine Sweetser, SBN 271142  
Aidan C. McGlaze, SBN 277270  
3 SCHONBRUN DESIMONE SEPLOW  
HARRIS & HOFFMAN LLP  
4 723 Ocean Front Walk  
Venice, California 90291-3270  
hoffpaul@aol.com  
5 schonbrun.ben@gmail.com  
catherine.sdshh@gmail.com  
6 amcglaze@sdshh.com  
Telephone: (310) 396-0731  
7 Fax: (310) 399-7040

8 Joshua Needle, SBN 077560  
Attorney at Law  
9 171 Pier Ave, Suite 192  
Santa Monica, CA 90405  
10 jcneedle@verizon.net  
Telephone: (310) 428-1092

11  
12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**

**BC 553552**

16 CALIFORNIA DUI LAWYERS  
ASSOCIATION, a 501(c)(6)  
17 CORPORATION; STEVEN R.  
MANDELL, an INDIVIDUAL  
18 TAXPAYER; DOES 1-100.

CASE NO.  
**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

19 Plaintiffs,

20 vs.

21 CALIFORNIA DEPARTMENT OF  
MOTOR VEHICLES ("DMV"), A  
22 GOVERNMENT AGENCY; JEAN  
SHIOMOTO, DIRECTOR,  
23 DEPARTMENT OF MOTOR  
VEHICLES; DOES 1-100.

24 Defendants.

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28  
**FAXED**

1 INTRODUCTION

2 THE DMV’s ADMINISTRATIVE LICENSE  
3 SUSPENSION/REVOCATION SYSTEM VIOLATES THE DUE  
4 PROCESS RIGHTS OF LICENSEES

5 1. “The continued possession of a driver’s license,<sup>1</sup> once issued, constitutes a  
6 vital property right subject to constitutional protections: ‘A driver's license cannot  
7 be suspended without due process of law.’ (*Bell v. Burson* (1971) 402 U.S. 535,  
8 539.) The DMV must issue licenses to those who are lawfully entitled to them.  
9 (§12811, subd. (a)(1)(A).) Once a license issues, an administrative decision to  
10 suspend or revoke it affects a fundamental right. (*Smith v. Department of Motor*  
11 *Vehicles* (1986) 179 Cal.App.3d 368, 373, fn. 2.)” *Cinquegrani v. Department of*  
12 *Motor Vehicles* (2008) 163 Cal.App.4 741, 750.

13 2. In broad terms, when a person in California is detained and/or  
14 arrested on suspicion of Driving Under the Influence (in violation of Veh. C.  
15 §23152, hereinafter “DUI”) and registers an excessive Blood Alcohol level  
16 through a chemical test designed to measure blood alcohol content, refuses to  
17 take a chemical test, or insists on taking a blood test rather than a breath test, the  
18 arresting officer or the DMV serves the driver with a “notice of [an] order of  
19 suspension or revocation” of his or her driver's license, advising that the “action”  
20 will become effective 30 days from the date of service. The notice explains the  
21 driver's right to an adjudicative administrative hearing before the effective date of  
22 the suspension if the driver requests a hearing within 10 days of receipt of the  
23 notice.<sup>2</sup> This is known as an “Administrative Per Se suspension” and the hearing

24 \_\_\_\_\_  
25 <sup>1</sup> Technically what is at issue is the “driving privilege” of individuals, but the  
26 statutes, cases and common nomenclature use both terms interchangeably.

27 <sup>2</sup> “Post-conviction” suspensions pursuant to Veh. C. §13352(a) et seq. are not  
28 (footnote continued)

1 is referred to as an “Administrative Per Se hearing,” (hereafter “APS  
2 suspension,” “APS hearing” or more broadly, the “APS system.”)<sup>3</sup>

3           3.       At an APS hearing the task of the Hearing Officer is to determine  
4 whether (1) the arresting officer had reasonable cause to believe the person was  
5 driving, (2) the driver was lawfully arrested, and (3) the person refused a blood  
6 alcohol test or was driving with a blood alcohol concentration of 0.08 percent or  
7 higher. If the Hearing Officer determines that the evidence establishes these three  
8 facts by a preponderance of the evidence, the license will be administratively  
9 suspended. (Veh. Code, §§ 13558, subd. (c)(1); 13557, subd. (b)(2); 14104.2, subd.  
10 (a). If not any pending or actual administrative order of suspension will be “set  
11 aside.”

12           4.       “When due process requires a hearing, the adjudicator must be  
13 impartial. Speaking of trials before judges, the United States Supreme Court has  
14 declared that ‘[a] fair trial in a fair tribunal is a basic requirement of due process.’  
15 Speaking of administrative hearings, and articulating the procedural requirements  
16 ‘demanded by rudimentary due process’ in that setting, the court has said that, ‘of  
17 course, an impartial decision maker is essential.’” *Haas v. County of San*  
18 *Bernardino* (2001) 27 Cal.4<sup>th</sup> 1017, 1025 (citations omitted). Not only is a biased  
19 decision maker constitutionally unacceptable, but “our system of law has always  
20 endeavored to prevent even the probability of unfairness.” *Withrow v. Larkin* (1975)

21 \_\_\_\_\_  
22 implicated or included in this separate administrative system so play no role in  
23 this lawsuit.

24 <sup>3</sup> The vast majority of APS proceedings involve DUI and DUI related matters but  
25 are also used in cases involving “negligent operators,” medical conditions and the  
26 like. For clarity Plaintiffs have chosen to limit the focus of this Complaint to DUI  
27 and DUI related matters, and the impact of this case on other APS proceedings is  
28 left for later discussion with the Court during the litigation.

1 421 U.S. 35, 46-47 (citations omitted).

2 5. The DMV's APS hearings violate the State and Federal Due Process  
3 rights (U.S. Constitution, Fourteenth Amendment and Article 1, Section 7 of the  
4 California Constitution) of license holders by failing to provide a fair, neutral, and  
5 impartial Hearing Officer. To the contrary, the APS system designed, devised,  
6 maintained, and administered by the DMV *requires* the Hearing Officers to act  
7 both as advocate for the DMV *and* arbiter/decision maker, creating an obvious  
8 and inherent conflict of interest and bias favoring one party over the other. "By  
9 definition, an advocate is a partisan for a particular client or point of view. The role  
10 is inconsistent with true objectivity, a constitutionally necessary characteristic of an  
11 adjudicator." *Howitt v. Superior Court (County of Imperial)* (1992) 3 Cal.App.4th  
12 1575, 1585.

13 6. Not only is the DMV's APS hearing fundamentally unconstitutional by  
14 design, the APS system unconstitutionally allows DMV managers, executives  
15 and/or administrators *ex parte* communications with the Hearing Officers and direct  
16 control over the decision-making process and the actual decisions of the Hearing  
17 Officers, thus further generating not only the appearance of unfairness but actual  
18 unfairness in their adjudicative proceedings by overtly and blatantly eliminating  
19 whatever patina of "independence" the Hearing Officer had left.

20 7. These procedures and practices are unconstitutional on their face and  
21 as applied. Injunctive and declaratory relief is required to prevent this ongoing  
22 violation of the rights of those whose licenses have been, are being or may in the  
23 future be suspended because they have been arrested for, but not convicted of,  
24 Driving Under the Influence or another specified offense.

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### **JURISDICTION AND VENUE**

27 8. The Court has personal jurisdiction over Defendants because they

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1 are a Government Agency and residents of the State of California.

2 9. Venue is proper in this Court in accordance with California Code of  
3 Civil Procedure §395(a) and California Civil Code §52.1(c) because the  
4 Department of Motor Vehicles does substantial business in Los Angeles County  
5 and many of the acts or omissions giving rise to the claim occurred in Los  
6 Angeles County.

7 10. Plaintiffs attempted to resolve these issues informally by sending a  
8 demand to the DMV and its senior officials on or about March 26, 2014. In that  
9 demand Plaintiffs requested that the DMV halt its unconstitutional practices and  
10 change its procedures to make them constitutional. To date, Plaintiffs have not  
11 received a response to their March 26, 2014, letter, leaving them no alternative  
12 but to file this lawsuit. A true and correct copy of the March 26, 2014, letter is  
13 attached hereto as Exhibit "A."

14  
15 **THE PARTIES**  
16

17 11. Plaintiff California DUI Lawyers Association ("CDLA") is a non-  
18 profit association of California lawyers who defend those accused of driving  
19 under the influence. Among its purposes is "...the promotion of the common  
20 interests of attorneys and other professionals engaged in ... defending persons  
21 charged with impaired driving. Among other activities, the Corporation  
22 shall...seek the improvement of laws and procedures governing the prosecution of  
23 impaired drivers." Its members reside, practice and pay property taxes in Los  
24 Angeles County and throughout the State of California. Its members routinely  
25 represent persons accused of driving under the influence whose licenses have  
26 been, are being and will be subjected to the unconstitutional practices challenged  
27 herein. Its members expend extra hours on their cases because the hearing officer  
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1 performs dual functions as prosecutor and judge; for that reason, its members must  
2 be prepared for the judge to rule against them and expend extra time in preparation  
3 and argument.

4 12. Plaintiff Steven R. Mandell is a licensed attorney, State Bar No.  
5 54042. His practice since 1972 has included representing persons accused of  
6 driving under the influence before the DMV in APS proceedings as well in courts  
7 of law but he is not a member of CDLA. Mr. Mandell has paid property taxes in  
8 the County of Los Angeles within the last year and expects to pay property taxes  
9 in the future in that County. He has an interest in ensuring that taxpayer funds  
10 are not employed to operate an adjudicative administrative system that violates  
11 Due Process.

12 13. Defendant DMV is a government agency duly organized under the  
13 laws of the State of California within the executive branch of the State of  
14 California. The DMV maintains offices in Los Angeles County and is  
15 responsible, among other things, for registering vehicles in California, issuing,  
16 suspending and revoking licenses to operate motor vehicles to drivers and  
17 “promoting public safety.”

18 14. Defendant JEAN SHIOMOTO is the Director of the DMV. As  
19 Chief Executive she is responsible for the implementation and continued  
20 enforcement of adjudicative administrative procedures challenged in this  
21 lawsuit. According to the Governor’s press release announcing her appointment  
22 as Director, Ms. Shiomoto resides in Sacramento, CA. Defendant SHIOMOTO is  
23 sued in her individual and official capacities.

24

25 **FACTS COMMON TO ALL ALLEGATIONS**

26

27 15. In the context of DUI cases, prior to 1990 the driving privilege was  
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1 suspended or revoked by the DMV only after a California license holder was  
2 convicted of a predicate criminal offense listed in Vehicle Code §13352.

3 16. In 1990 the Legislature passed, and the Governor signed into law,  
4 Vehicle Code §13353 et seq., authorizing an additional administrative suspension  
5 system that mandated driving privilege suspensions and revocations separate and  
6 apart from the criminal justice system, known as the “Administrative Per Se”  
7 (hereinafter “APS”) suspension system.

8 17. The APS legislation was intended to impose an “immediate” suspension  
9 of the privilege to drive that was more expeditious and efficient than the post-  
10 conviction suspension system.

11 18. At the request of the Legislature, in 1995 the California Law Revision  
12 Commission (“CLRC”) proposed a modernization of the overall design for all  
13 administrative agency adjudicative procedures under the Administrative Procedures  
14 Act (“APA”).

15 19. The CLRC recommended that the Legislature “...superimpose on all  
16 state agency hearing procedures an ‘administrative adjudication bill of rights’  
17 providing fundamental due process and public policy protection,” specifically  
18 noting, *inter alia*, that “The presiding officer (at such administrative adjudications)  
19 must be neutral, the adjudicative function being separated from the investigative,  
20 prosecutorial and advocacy functions within the agency.” This is known as an  
21 “internal separation of functions” design.

22 20. This “separation of functions” mandate was enacted as Govt. Code  
23 §11425.30: “(a) A person may not serve as presiding officer in an adjudicative  
24 proceeding in any of the following circumstances: (1) The person has served as  
25 investigator, prosecutor, or advocate in the proceeding or its pre-adjudicative stage.  
26 (2) The person is subject to the authority, direction, or discretion of a person who  
27 has served as investigator, prosecutor, or advocate in the proceeding or its pre-  
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1 adjudicative stage.”

2 21. Vehicle Code §§14100-14112 govern the operations and procedures of  
3 the APS system.

4 22. Vehicle Code §14112(b) specifically exempts the APS adjudicative  
5 hearings from the prophylactic “separation of functions” mechanism set forth in the  
6 APA “Bill of Rights”: “...(b) Subdivision (a) of Section 11425.30 of the  
7 Government Code does not apply to a proceeding for issuance, denial, revocation, or  
8 suspension of a driver’s license pursuant to this division.”

9 23. The Department implemented this legislation by designing an APS  
10 system wherein APS hearings, with few if any exceptions, have been and are  
11 presided over by “Driver Safety (Hearing) Officers” who are uniformly subordinate  
12 employees of the “Licensing Operations Division, Public Safety Branch,” of the  
13 DMV.

14 24. Driver Safety (Hearing) Officers are governed by the “Driving Safety  
15 Manual” (“DSM”), written and promulgated by the DMV’s Licensing Operations  
16 Division.

17 25. The DSM states, in section 2.021, that the “Hearing Officer Role” is to  
18 “preside over an administrative hearing with the power to administer an oath, take  
19 testimony, rule on the admissibility of evidence, and render a decision on behalf of  
20 the agency. The hearing officer will also conduct investigations, reexaminations,  
21 and interviews.”

22 26. DSM Section 2.021 further specifies that the Driver Safety (Hearing)  
23 Officer is “...a trier of fact as well as an advocate for the department and driver  
24 safety.”

25 27. As “an advocate for the department and driver safety” the Driver Safety  
26 (Hearing) Officer is commanded to, “1) Assist, defend, prepare and/or present the  
27 DMV’s case, and 2) promote traffic safety.” (Id.)

28

1           28.     DSM section 12.030 states: “APS/PAS hearings are among the more  
2 legally complex of the departments administrative hearings. The hearing officer  
3 must know many details of the law to conduct and decide these hearings.”

4           29.     The Hearing Officer is subordinate to, and dependent upon all levels of  
5 DMV management for his/her continued employment and career advancement.

6           30.     The Hearing Officer’s initial APS decision to “set aside” a suspension is  
7 subject to *ex parte* review, criticism and unilateral reversal, by his/her office and/or  
8 regional manager as well as DMV officials in Sacramento prior to it being issued to  
9 the licensee, without notice to or input from the licensee.

10          31.     Office Managers maintain records of how many “set asides” each  
11 Hearing Officer issues. Hearing Officers are subject to employment sanctions if  
12 DMV Management determines that they “set aside” an “excessive” number of  
13 suspensions; employment sanctions include informal talks, notations in their  
14 personnel files, being ordered to attend “re-training,” stagnation in their careers and  
15 even possible termination.

16

17

**FIRST CAUSE OF ACTION**

18

**VIOLATION OF 42 U.S.C. §1983: DUE PROCESS RIGHTS UNDER THE  
19           FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION**

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21          32.     Plaintiffs hereby incorporate by reference paragraphs 1 through 32  
22 as if set forth here in full.

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23          33.     By design, implementation and maintenance of the adjudicative  
24 administrative (APS) system described above, Defendants and each of them  
25 deprived, deprive and will continue to deprive Plaintiff CDLA’s members’  
26 clients and Plaintiff Mandell’s clients of the procedural due process rights  
27 conferred upon them by the Due Process Clause of the Fourteenth Amendment

1 to the United States Constitution and their rights to property under the Fifth  
2 Amendment which has been incorporated against the states through the  
3 Fourteenth Amendment, to wit, their driver's licenses.

4 34. Plaintiff CDLA's members' clients and Plaintiff Mandell's clients  
5 have been, are currently and will in the future continue to be deprived of their  
6 constitutionally protected property right to maintain their driver's licenses under  
7 this unconstitutional regime if it is allowed to continue.

8 35. Plaintiff CDLA's members and Plaintiff Mandell were injured, are  
9 currently being injured and will continue to be injured by this deprivation of  
10 due process rights because they were, are and will continue to be required to  
11 represent their clients in a fundamentally unfair and unconstitutional  
12 adjudicative system. The unfairness of this process requires, *inter alia*, the  
13 additional expenditure of time and costs for them and their clients.

14 36. The deprivations of the procedural Due Process rights of Plaintiff  
15 CDLA's members' clients and Plaintiff Mandell's clients are a proximate result  
16 of the policies, procedures, practices, and/or customs designed, implemented,  
17 enforced and maintained by the DMV. In addition to the design flaws and  
18 inherent conflicts created by that design, the DMV has maintained policies,  
19 procedures, practices, and/or customs of critically reviewing, scrutinizing and  
20 reversing Hearing Officer decisions to set aside the suspension of a license.  
21 These ex parte communications are without notice to licensees or their attorneys  
22 such as CDLA members or Steven Mandell. The maintenance of said policies,  
23 procedures, customs and practices evidences a deliberate indifference to, and  
24 indeed a deliberate interference with, the constitutional rights of Plaintiff  
25 CDLA's members' clients and Plaintiff Mandell's clients.

26 37. Plaintiff CDLA and its members and their clients and Plaintiff  
27 Mandell and his clients have suffered, are suffering and will continue to suffer  
28

1 immediate and irreparable injury for which there is no adequate remedy at law if  
2 the aforementioned policies, procedures, practices and/or customs of suspending  
3 licenses without providing an impartial Hearing Officer is allowed to continued.  
4 Therefore, Plaintiffs, and each of them, seeks declaratory and injunctive relief,  
5 both preliminary and permanent, to stop Defendant DMV from continuing the  
6 unlawful, unconstitutional policies, procedures, practices and/or customs  
7 described above.

8 38. In addition, pursuant to 42 U.S.C. §1988, Plaintiff seeks its costs  
9 and attorney fees incurred as a result of this lawsuit.

10  
11 **SECOND CAUSE OF ACTION**  
12 **VIOLATION OF DUE PROCESS RIGHTS UNDER CALIFORNIA**  
13 **CONSTITUTION ARTICLE I, §7**

14  
15 39. Plaintiff hereby incorporates by reference paragraphs 1 through 39  
16 as if set forth here in full.

17 40. The aforementioned acts of Defendants violated the due process  
18 rights of PLAINTIFFS and thus imposed unique burdens on Plaintiffs,  
19 Plaintiff’s members and clients, as set forth above, in violation of Article I,  
20 section 7 of the California constitution. The California Due Process clause has  
21 been interpreted in a somewhat more protective fashion than the federal courts  
22 have interpreted the Fifth and Fourteenth Amendments, and includes protections  
23 of the “dignitary interests” of individuals coming under its protections.

24 41. In addition, the discussion of substantive content of cases with  
25 managers and advice to hearing officers on how to rule in their capacity as judges  
26 violates the rights of Respondents to due process.

27 42. Plaintiff CDLA and its members and their clients and Plaintiff  
28

1 Mandell and his clients have suffered, are suffering and will continue to suffer  
2 immediate and irreparable injury for which there is no adequate remedy at law if  
3 the aforementioned policies, procedures, practices and/or customs of suspending  
4 licenses without providing an impartial Hearing Officer is allowed to continued.  
5 Therefore, Plaintiffs, and each of them, seeks declaratory and injunctive relief,  
6 both preliminary and permanent, to stop Defendant DMV from continuing the  
7 unlawful, unconstitutional policies, procedures, practices and/or customs  
8 described above.

9 43. Plaintiff's members were injured by this deprivation of due process  
10 rights because they were forced to represent their clients in an unfair process. The  
11 unfairness of this process created additional expenditure of time and costs for  
12 Plaintiffs' members.

13 44. Plaintiffs are further entitled to recover from Defendants their  
14 reasonable costs and attorney fees incurred in bringing this action pursuant to  
15 California Code of Civil Procedure §1021.5.

16 **THIRD CAUSE OF ACTION**  
17 **ILLEGAL EXPENDITURE OF FUNDS**

18 45. Plaintiff hereby incorporates by reference paragraphs 1 through 46 as if  
19 set forth here in full.

20 46. Plaintiff CDLA has members who reside, practice and pay property taxes  
21 in Los Angeles County and throughout the State of California. Plaintiff Steven  
22 Mandell has paid property taxes in the County of Los Angeles within the last year  
23 and expects to pay property taxes in the future in that County. He has an interest in  
24 ensuring that taxpayer funds are not employed to operate an adjudicative  
25 administrative system that violate Due Process.

26 47. The expenditure of public funds to, *inter alia*, pay managers to  
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1 review set asides of pending and actual administrative suspensions and to speak  
2 with Hearing Officers about the substance of their decision prior to and after that  
3 decision being rendered constitutes an “illegal expenditure.”

4 48. The activities of Defendant DMV as alleged herein have resulted in,  
5 and unless restrained will continue to result in, the illegal expenditure and waste  
6 of public funds and an injury to the tax paying residents of the state of  
7 California. An injunction against Defendant DMV is therefore warranted.

8 49. Plaintiffs are further entitled to recover from Defendant their  
9 reasonable costs and attorney fees incurred in bringing this action pursuant to  
10 California Code of Civil Procedure §§ 526a and 1021.5.

11  
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs request entry of judgment in their favor and against  
14 Defendants as follows:

15 A. For declaratory relief declaring that the current APS system on its face  
16 and/or as applied administered by the DMV violates the Due Process clauses of  
17 the United States and California Constitutions;

18 B. For injunctive relief enjoining the unlawful practices detailed herein.

19 C. For affirmative injunctive relief directing the Defendant DMV to  
20 design and implement a neutral administrative adjudicative system.

21 D. For reasonable costs of this suit and attorneys' fees pursuant to federal  
22 law, including 42 U.S.C. §1988, and California law, including Code of Civil  
23 Procedure §§526a and 1021.5; and

24 E. For such further relief as the Court may deem just, proper, and  
25 appropriate.

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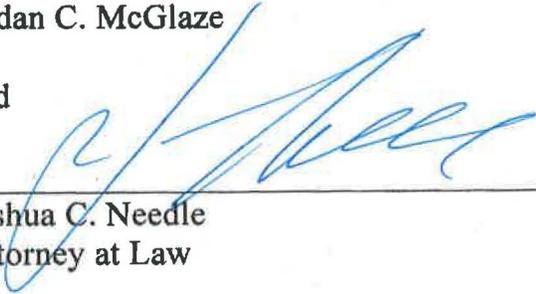
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HARRIS & HOFFMAN, LLP



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Paul L. Hoffman  
Benjamin Schonbrun  
Catherine Sweetser  
Aidan C. McGlaze

and



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Joshua C. Needle  
Attorney at Law